

California Regional Water Quality Control Board
North Coast Region

Order No. R1-2008-0113

For

Administrative Civil Liability Order

In the Matter of

Ronald E. Yingling
For Violations of Waste Discharge Requirements
State Water Board Order No. 99-08DWQ
WDID No. 153C349380

Trinity County

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter the Regional Water Board), hereby gives notice that:

1. On October 24, 2007, Ronald E. Yingling (hereinafter Discharger) was issued a notice of permit coverage under the statewide General National Pollutant Discharge Elimination System Construction Storm Water Permit, Water Quality Order 99-08-DWQ, ID No. 153C349380, for grading activities on property located on State Highway 3, APN # 024-200-23-00, Weaverville, Trinity County, California (Site).
2. Site grading had begun during the summer of 2007. The grading project involved construction of an access road and completion of several home site pads. On September 18, 2007, in response to a citizen complaint regarding extensive grading work, Regional Water Board staff inspected the Site. Staff immediately contacted the Discharger and raised concerns about the risks of sediment discharge from mass grading and exposed soils near the start of the rainy season. Regional Water Board staff emphasized the need for the installation of adequate erosion and sediment control Best Management Practices (BMPs) in order to prevent sediment discharges and the need for frequent inspection and maintenance of the BMPs throughout the winter season.
3. On January 14, 2008 a second citizen complaint was forwarded to Regional Water Board staff relating to the Site, including pictures showing significant discharge of sediments from the Site to the roadside ditch along Highway 3. This drainage ditch crosses under Highway 3 approximately 200 feet downgradient from the Site, eventually discharging to East Weaver Creek.
4. A February 19, 2008 Regional Water Board inspection of the Site confirmed that the discharges of sediments to the Highway 3 drainage ditch were tied

directly to erosion occurring at the Site. The entire length and width of the drainage ditch, approximately 200 feet by 40 feet, was inundated with sediment, in places over 6 inches deep. Erosion of the access road outer fill slope and Site drainage ditches was plainly evident. Erosion control efforts onsite were ineffective at preventing soil erosion in storm water runoff.

5. The following facts are the basis for the alleged violations in this matter:
 - a. Photographs contained in Regional Water Board files note Site conditions during the period January – February 2008. The drainage ditch immediately downgradient from the Site was inundated by sediments.
 - b. Sediment laden runoff from the Site discharged directly into state waters via the Highway 3 drainage ditch, which flows to East Weaver Creek and ultimately to the Trinity River. The volume of turbid discharges resulting from inadequate erosion and sediment control from this Site could not be calculated.
 - c. Water Quality Order No. 99-08-DWQ, applicable to this project, contains the following Discharge Prohibition:

“A.3. Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”

Water Quality Order No. 99-08-DWQ also contains the following Receiving Water Limitations:
 - “B.1. Storm water discharges and authorized nonstorm water discharges to any surface or ground water shall not adversely impact human health or the environment.
 - B.2. The SWPPP developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable Regional Water Board Basin Plan.
 - B.3. Should it be determined by the Discharger, State Water Board, or Regional Water Board that storm water discharges and/or authorized nonstorm water discharges are causing or contributing to an exceedance of an applicable water quality standard, the discharger shall:

- a. Implement corrective measures immediately following the discovery that water quality standards were exceeded, followed by notification to the Regional Water Board by telephone as soon as possible but no later than 48 hours after the discharge has been discovered. This notification shall be followed by a report within 14-calendar days to the appropriate Regional Water Board, unless otherwise directed by the Regional Water Board, describing (1) the nature and cause of the water quality standard exceedance; (2) the BMPs currently being implemented; (3) any additional BMPs which will be implemented to prevent or reduce pollutants that are causing or contributing to the exceedance of water quality standards; and (4) any maintenance or repair of BMPs. This report shall include an implementation schedule for corrective actions and shall describe the actions taken to reduce the pollutants causing or contributing to the exceedance.”
- d. The Discharger violated Water Quality Order 99-08-DWQ, Section A.3. by discharging storm water runoff to state waters that caused, or threatened to cause, pollution, contamination, or nuisance.
- e. The Discharger violated Water Quality Order 99-08-DWQ, Section B.2. by discharging storm water runoff to state waters that exceeded applicable water quality standards contained in the Regional Water Board Basin Plan.
- f. Conditions observed by staff inspection confirmed that conditions of pollution and/or nuisance were occurring as a result of sediment-laden storm water runoff discharged from this facility. The Discharger violated Water Quality Order 99-08-DWQ, Section B.3.a. by not implementing corrective measures immediately following discovery that water quality standards had been exceeded, and by not notifying the Regional Water Board within 48 hours of discovery of such exceedences.

PROPOSED CIVIL LIABILITY

Section 13385(a)(4) of the California Water Code provides for the imposition of civil liabilities against dischargers who violate any order or prohibition issued pursuant to California Water Code Section 13243 or Article 1 of Chapter 5. As detailed above, the Discharger violated the discharge prohibitions and requirements of Water Quality Order No. 99-08-DWQ. Section 13385(c) provides that the maximum amount of civil liability that may be imposed by the Regional Water Board is \$10,000 per day of violation, plus where there is

discharge in excess of 1,000 gallons that is not susceptible to cleanup or cannot be cleaned up, an additional liability not to exceed \$10 per gallon of waste discharged and not cleaned up in excess of 1,000 gallons. The maximum civil penalty that could be imposed against the Discharger in this matter is calculated as follows:

One day of observed discharge violations that occurred on February 19, 2008

One day of discharge times \$10,000 per day = \$10,000

Total Potential Civil Liability: \$10,000

A significant volume of turbid storm water runoff discharged from the Site into state waters. However, the discharge volume associated with these violations cannot be accurately determined.

1. In determining the amount of any civil liability, pursuant to California Water Code, Section 13385(e), the Regional Water Board took into account the nature, circumstances, extent, and gravity of the violation; the susceptibility to cleanup or abatement and, with respect to the Discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. The Regional Water Board also considered the requirement in this section that states that, at a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.
 - a) Nature, circumstances, extent and gravity of the violation: Discharger erosion and sediment control efforts on-site were inadequate. Controls were incomplete, undersized and/or non-existent. Sediment discharges from this project filled drainage areas and entered state waters. High turbidity and excessive sediment deposition affects aquatic organisms and their habitat. Consideration of the nature, circumstances, extent and gravity of the discharge does not provide reason for reducing from the maximum amount of civil liability to be imposed.
 - b) Susceptibility to Cleanup or Abatement : The Discharger failed to take appropriate actions to control sediment discharges from the Site, nor remove any sediments remaining within the adjacent drainage ditch before the start of the rainy season last year. Consideration of the Discharger's cleanup efforts does not provide reason for reducing from the maximum amount of civil liability to be imposed.

- c) Discharger's ability to pay: The Regional Water Board has no information to indicate that the Discharger would be unable to pay any imposed administrative civil liability.
 - d) Prior history of violations: Regional Water Board staff has no record of this Discharger having a prior history of violations. Consideration of prior history of violations does provide reason for reduction from the maximum amount of civil liability to be imposed.
 - e) Degree of culpability: The Discharger is the construction stormwater permit holder and developer of the project and, as such, he is responsible for permit compliance. The Discharger was both generally unresponsive to concerns raised by Regional Water Board staff about the adequacy of his erosion control facilities, and was slow to repair and/or maintain existing erosion controls following significant rainfall events. Had the Discharger promptly installed and maintained erosion controls, off-site discharges to receiving waters could have been significantly minimized. Consideration of the degree of culpability does not provide reason for reducing from the maximum amount of civil liability to be imposed.
 - f) Economic benefit: Economic benefit derived from avoiding the installation of adequate erosion and sediment controls can be approximated by addressing the labor and material costs avoided. For a project of this size and complexity, containing highly erosive soils, a conservative estimate of costs for the required erosion and sediment control is \$1,500-\$2,000. Controlling soils at this Site with effective erosion controls would not have been a major undertaking. Consideration of the economic savings resulting from the violation does not provide reason for reducing from the maximum the amount of civil liability to be imposed, and in fact suggests a minimum amount that must be recovered.
 - g) Other matters that justice may require: A March 17, 2008 inspection of the Site revealed that some erosion control work, in the form of drainage ditch pipe installation, had been performed. Consideration of other matters as justice may require does provide reason for reducing from the maximum the amount of civil liability to be imposed.
2. On August 28, 2008 the Regional Water Board Assistant Executive Officer issued an Administrative Civil Liability Complaint in response to the sediment discharge. Phone contact with the Discharger indicates that he is requesting a hearing on this Order. The hearing was properly noticed.

3. The adoption of this Order is an enforcement action to protect the environment, and is therefore exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) pursuant to Title 14, California Code of Regulations, Sections 15308 and 15321(a)(2).

THEREFORE, IT IS HEREBY ORDERED, Pursuant to California Water Code Section 13385, that:

1. The Discharger be assessed an administrative civil liability in the amount of \$5,000 to be paid to the State Water Pollution Cleanup and Abatement Account within 30 days of the adoption of this Order.
2. Notwithstanding the issuance of this Order, the Regional Water Board shall retain the authority to assess additional penalties for continuing violation of the Construction Storm Water permit, including discharges of sediment from the drainage ditch that may occur this upcoming rainy season if the sediments are not removed.

Certification

I, Catherine Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region on October 23, 2008.

Catherine Kuhlman
Executive Officer